

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

IN RE: BRUNTZ, Jordan S. et al.)	
)	APPEAL NO. _____
SERIAL NO: 10/713,370)	
)	
FOR: METHOD OF ASSEMBLING AN)	
APPLIANCE WITH INTERCHANGE-)	
ABLE CONSOLES)	
)	BRIEF ON APPEAL
FILED: November 14, 2003)	
)	
GROUP ART UNIT: 3726)	
)	
CONF NO: 1594)	

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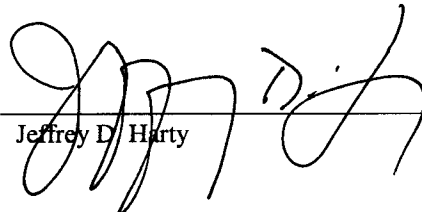


TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	REAL PARTY IN INTEREST	1
III.	RELATED APPEALS AND INTERFERENCES	1
IV.	STATUS OF CLAIMS	1
V.	STATUS OF AMENDMENTS	1
VI.	SUMMARY OF CLAIMED SUBJECT MATTER	1
VII.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL.....	4
VIII.	ARGUMENT	4
IX.	CONCLUSION	9
X.	APPENDIX - Claims	11
XI.	EVIDENCE INDEX	14
XII.	RELATED PROCEEDING APPENDIX	15

I. INTRODUCTION

This is an appeal of the Final Rejection dated January 5, 2007, finally rejecting claims 1 and 3-15. Appealed claims 1 and 3-15 are set forth in the attached Claim Appendix.

II. REAL PARTY IN INTEREST

The real party in interest is Maytag Corporation. This application has been assigned to Maytag Corporation having an address of 403 West Fourth Street North, Newton, Iowa 50208. An assignment was recorded to Maytag Corporation at reel 014961, frame 0918 on August 9, 2004.

III. RELATED APPEALS AND INTERFERENCES

None.

IV. STATUS OF CLAIMS

Pending claims 1 and 3-15 are all submitted for appeal. Claim 2 has been cancelled.

V. STATUS OF AMENDMENTS

No Amendments After Final have been filed.

VI. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed towards both a method of assembling appliances, and the appliances themselves. Generally, the appliances all include a universal or standard base unit, and a console selected from a plurality of consoles having different control

features. The consoles may be assembled at a location other than the manufacturing plant, such as a retail establishment or at a purchaser's home. This ability to utilize multiple different control consoles on a single standardized base unit so as to create different appliance models overcomes problems in the prior art. In particular, the prior art requires that different models be completely assembled, with a dealer or retail establishment having to maintain an inventory of assembled models, which requires costly storage space. If a customer desires a model which was not available at the dealer's location, the assembled model would have to be shipped from the manufacturer, resulting in delays and possible additional costs for expedited shipping. With the present invention, the full model inventory needs of a dealer or retailer establishment are reduced, along with any delays in costs required for shipping unavailable models, since the dealer or retailer can stock a number of standardized base units and all the different control consoles for assembly onto the base unit after the customer selects the desired features.

This application includes independent method claims 1 and 8 and independent product claim 14, which are summarized below, including reference numerals to Figures 1 and 2 and citation to the specification:

Claim 1	Citations to Specification
A method of assembling appliances, comprising: providing a plurality of structurally identical base units (12) with identical electrical components;	Page 2, lines 8-9; page 3, lines 29-31; page 4, lines 8-13.
providing a plurality of control consoles (14A, B, C) with at least one different control feature between the consoles;	Page 2, lines 9-11.

selecting a first control console (14) from the plurality of consoles (14A, B, C); and	Page 2, lines 9-11 and 13-14; page 3, lines 25-26.
mounting the first control console (14) onto one of the base units (12) to create a first model of the appliance wherein the base unit of the first model includes a first electrical component which is not electrically connected to the first control console;	Page 3, lines 20-24 and 26-27.
selecting a second control console (14) from the plurality of consoles (14A, B, C) with control features different from the first control console;	Page 3, lines 15-18.
mounting the second control console (14) on a second of the base units (12) to create a second model of the appliance with the first electrical component of the base unit being electrically connected to the second control console; and	Page 3, lines 20-23 and 29-31.
the first and second consoles (14) being interchangeable on the base units (12) to create first and second appliance models.	Page 3, lines 29-31.

Claims 3-7 see Specification at page 2, lines 17-19.

Claim 8	Citations to Specification
A method of assembling an appliance, comprising: allowing a purchaser to select a control console from a plurality of consoles (14A, B, C) each having different control features for operating components in a base unit (12); and	Page 2, lines 12-14; page 3, lines 15-18 and 25-26.
then mounting the selected control console (14) onto the base unit (12) to create the assembled appliance.	Page 2, lines 14-15; page 3, lines 26-27.

Claims 9-13 see Specification at page 2, lines 17-19.

Claim 14	Citations to Specification
An appliance, comprising: a base unit (12);	Page 3, lines 3-4; Figures 1 and 2.
electrical components in the base unit (12) for performing functions of the appliance;	Page 4, lines 4-5
a control console (14) mounted on the base unit (12) and being electrically connected to selected electrical components in the base unit to control operation of the selected components;	Page 3, lines 3-4 and 20-24; Figures 1 and 2.
the control console (14) being selected from a group of consoles (14A, B, C) each having different control features; and	Page 2, lines 9-11; page 3, lines 15-18; Figures 1 and 2.
base unit (12) being universal so as to function with all the consoles (14A, B, C) in the group of consoles.	Page 2, lines 8-9; page 3, lines 20-24 and 29- 31; page 4, lines 8-13.

VII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner states claims 1 and 3-15 are unpatentable under 35 U.S.C. § 103 over Fumagalli European Patent Application No. 0,806,714. This is the only reference cited in the rejection of the claims.

VIII. ARGUMENT

As set forth above, claim 1 requires "a plurality of structurally identical base units with identical electrical components" and "a plurality of control consoles with at least one different control feature between the consoles." Claim 1 further provides that the first and second consoles are "interchangeable on the base units to create first and second appliance models."

The Examiner properly acknowledges at least one difference between claim 1 and the cited Fumagalli patent, that is, Fumagalli does not disclose a plurality of control panels. See

the Final Office Action, paragraph 2, lines 8-9. However, the Examiner then improperly jumps to the unsupported conclusion that this difference is obvious to one of ordinary skill in the art at the time of the invention. More particularly, the Examiner asserts that the single console with interchangeable keys of Fumagalli is "structurally equivalent" to the plurality of consoles required by claim 1. This assertion by the Examiner cannot be the basis for an obviousness rejection.

First, structural equivalency is not a proper test for obviousness. Furthermore, the Examiner provides no evidence that multiple consoles having different features is structurally equivalent to a single console having interchangeable keys. The Examiner cites column 1, lines 43-48 of Fumagalli, which discusses the prior art wherein different circuit boards were provided for different appliance models. However, Fumagalli explicitly states that this multiple circuit board requirement added to the cost of the appliance, and that his single keyboard or console overcame this prior art problem. See Fumagalli, column 1, lines 43-51. Thus, Fumagalli teaches away from multiple control consoles, as required by claim 1. The objective of Fumagalli was to utilize a single control panel with interchangeable keys having electrical contacts which could be selectively opened or closed, thereby eliminating the need to provide several different versions of the same household appliance. See column 1, lines 53-column 2, line 20. It has long been the law that it is not obvious to modify prior art reference in a manner inconsistent with the reference. In re Gorden, 733 F.2d 900, 902 (Fed. Cir. 1984).

Fumagalli changes appliance models by changing the keys of a single console, rather than by changing consoles, as in the present invention. Changing one console for a different console having different features, is not the equivalent of changing the keys of identical consoles, contrary to the suggestion of the Examiner. The Examiner's unsupported

conclusion that a single console with interchangeable keys is structurally equivalent to a plurality of consoles having different functions or features is illogical. A simple analogy shows the fallacy of the Examiner's reasoning: the owner of a single car can paint the car any color he or she desires, but this is not the equivalent of a car dealer having multiple cars of the same model with different colors. The owner of the single car is analogous to the single console of Fumagalli, and the car dealer with multiple different colored cars is analogous to Applicant's multiple consoles with different features.

The Examiner cites another difference between the present claims and Fumagalli, that is, that the end user in Fumagalli "changes" the console simply by inserting a particular key, instead of replacing the whole console. (See paragraph 2, last two lines, page 3 of the Final Office Action). Again, there is no evidence that inserting a key is the equivalent of replacing a whole console.

Thus, the Examiner's obviousness rejection of claim 1 based upon Fumagalli must be reversed.

Claims 3-7 depend from claim 1 and should be allowable as depending from an allowable base claim. Claims 4-7 are also allowable, since the limitations of these depending claims are not met by Fumagalli.

More particularly, claim 4 provides that the console selection is made by a consumer. Since Fumagalli only has a single console, there is no selection made by a consumer, in accordance with claim 4.

Claim 5 requires that the console mounting is done at a retail establishment. Claim 6 provides that the console mounting is done by an appliance dealer. Claim 7 provides that the console mounting is done at a regional warehouse. The Examiner asserts that these limitations are an "obvious matter of design choice wherein no stated problem is solved or

unexpected results obtained in having a control console mounted in one place or another." However, Applicant's Specification describes the problem in the prior art of the dealer or retail establishment needing to have all the various models of the appliance in inventory, which requires costly storage space. With the present invention, such storage space is minimized, since the inventory is reduced to standardized base units and multiple consoles which can be assembled after the buyer chooses the desired features for the appliance. Thus, the limitations of claims 5-7 solve a problem, such that the premise for the Examiner's rejection of claims 5-7 is fatally defective. Furthermore, "design choice" is not a proper basis for a § 103 obviousness rejection. Rather, § 103 requires obviousness to be based upon prior art, which the Examiner has not cited.

Furthermore, the Examiner submits that these types of appliances are not typically self-installed, but rather are delivered and installed by professionals, such as a dealer representative, at the purchaser's home. The Examiner provides no evidence for this assertion. To the contrary, the appliances of the present invention include a washing machine, as shown in the drawings, and dryers, as described in the Specification at page 1, line 5. It is common for consumers to purchase washers and dryers at home improvement stores, such as Home Depot, Menards, and Lowes, and take them home themselves. An electric dryer (as opposed to a gas dryer) merely needs to be plugged into an outlet, while a washing machine simply needs to be plugged into an outlet and the water lines or hoses easily connected to common water hydrants or faucets. These simple installations do not require a professional.

Independent claim 8 is similar to claim 1 in requiring a control console to be selected from a plurality of consoles, each having different control features for operating components in a base unit. As discussed above with respect to claim 1, and as admitted by the Examiner,

Fumagalli does not have a plurality of consoles with different control features. Rather, Fumagalli has a single console wherein the features can be changed by inserting a key. The Examiner provides no evidence to support the "structure equivalency" assertion between claim 8 and Fumagalli. Furthermore, Applicant notes that the Examiner states at the bottom of page 2, last two lines, that Fumagalli's appliance and method are "an improvement over Applicant's claimed invention of providing different versions of the control console." If Fumagalli is an improvement, it cannot be a structural equivalent.

Claim 8 further requires that after the purchaser selects a control console from a plurality of consoles, the selected console is then mounted onto the base unit to create the assembled appliance. There is no disclosure in Fumagalli and no other evidence cited or relied upon by the Examiner which meets this limitation of claim 8. The Examiner is silent as to the sequence of a purchaser first selecting the console, and then the console being assembled onto the base unit, in accordance with claim 8.

Therefore, the obviousness rejection of claim 8 must be reversed.

Claims 9-13 depend from claim 8 and should be allowable as depending from an allowable base claim. Claims 9-11 and 13 further distinguish over Fumagalli. More particularly, claim 9 requires that the mounting of the console be done at a retail establishment. Claim 10 requires that the mounting of the console be done at the purchaser's home, claim 11 requires that the mounting be done by a dealer representative. Claim 13 requires that the mounting is done at a regional warehouse. As discussed above with respect to claims 5-7, the Examiner's obviousness rejection of these claims is unsupported and flawed, since Applicant has described the problem in the prior art which is solved by the invention as set forth in these claims. Also, the Examiner's "design choice" rejection of these claims is improper under § 103, and the assertion that these appliances are not typically self-

installed is erroneous. Therefore, the obviousness rejection of these depending claims should be reversed.

Independent claim 14 is a product claim requiring, among other things, a control console selected from a group of consoles each having different features, and a base unit which is universal so as to function with all of the consoles in the group of consoles. The Examiner's admission that Fumagalli does not have a plurality of control consoles, and the failure to cite any other evidence for such group of consoles or a universal base unit that functions with the various consoles makes the obviousness rejection of claim 14 defective, such that the rejection must be reversed. Again, in Fumagalli, the consoles are all the same, contrary to the requirement of claim 14 that the consoles have different features. The prior art discussion in Fumagalli regarding different firmware or circuit boards also implies that each of the base units are different so as to accommodate these different microcontrollers or circuit boards, contrary to the requirement of claim 14 that the base units are universal for accepting all of the control consoles.

Therefore, claim 14 and depending claim 15 distinguish over Fumagalli so as to be allowable.

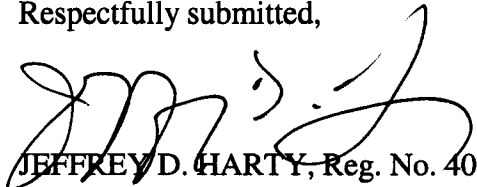
IX. CONCLUSION

For the above-stated reasons, it is submitted that the claims are in a condition for allowability. The decision of the Examiner, therefore, should be reversed and the case allowed.

Please charge Deposit Account No. 26-0084 the amount of \$500 for this Appeal Brief.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. D. Harty', is written over the printed name.

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X. APPENDIX - CLAIMS

1. A method of assembling appliances, comprising:
providing a plurality of structurally identical base units with identical electrical components;
providing a plurality of control consoles with at least one different control feature between the consoles;
selecting a first control console from the plurality of consoles; and
mounting the first control console onto one of the base units to create a first model of the appliance wherein the base unit of the first model includes a first electrical component which is not electrically connected to the first control console;
selecting a second control console from the plurality of consoles with control features different from the first control console;
mounting the second control console on a second of the base units to create a second model of the appliance with the first electrical component of the base unit being electrically connected to the second control console; and
the first and second consoles being interchangeable on the base units to create first and second appliance models.
3. The method of claim 1 wherein all electrical components of the base unit are electrically connected to the second control console.
4. The method of claim 1 wherein the console selection is made by a consumer.
5. The method of claim 1 wherein the console mounting is done at a retail establishment.
6. The method of claim 1 wherein the console mounting is done by an appliance dealer.
7. The method of claim 1 wherein the console mounting is done at a regional warehouse.

8. A method of assembling an appliance, comprising:
allowing a purchaser to select a control console from a plurality of consoles each having
different control features for operating components in a base unit; and
then mounting the selected control console onto the base unit to create the assembled
appliance.
9. The method of claim 8 wherein the mounting is done at a retail establishment.
10. The method of claim 8 wherein the mounting is done at the purchaser's home.
11. The method of claim 8 wherein the mounting is done by a dealer representative.
12. The method of claim 8 further comprising upgrading the appliance by removing the
selected control console and mounting a second selected control console having additional
control features.
13. The method of claim 8 wherein the console mounting is done at a regional warehouse.
14. An appliance, comprising:
a base unit;
electrical components in the base unit for performing functions of the appliance;
a control console mounted on the base unit and being electrically connected to selected
electrical components in the base unit to control operation of the selected
components;
the control console being selected from a group of consoles each having different control
features; and
base unit being universal so as to function with all the consoles in the group of consoles.

15. The appliance of claim 14 wherein the group of consoles includes a first console with first controls and a second console with second controls, and the first and second consoles being interchangeably mounted on the base unit to create first and second appliance models having at least one functional difference between the models.

XI. EVIDENCE APPENDIX

None

XII. RELATED PROCEEDING APPENDIX

None